IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

SA.No. 362 of 1993()

AS.90/1989 of SUB COURT, PAYYANNUR
OS.143/1986 of MUNSIFF COURT, PAYYANNUR
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APPELLANT/PLAINTIFF

CHERUKUNIYAN KRISHNAN, SON OF PARU
AGED 40 YEARS, HEAD CONSTABLE
POLICE STATION, CHITTARIKKAL.

BY ADV. SRI.M.K.DAMODARAN.

RESPONDENTS:DEFENDANTS
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1. PAYANI KUNHAMBU, SON OF POKKAN
50 YEARS, PRESIDENT, PULAYA SAMUDAYA
SMASANA COMMITTEE, KOKKOT IN KORIME AMSOM
AND DESOM.

2. THE SECRETARY, PULAYA SAMUDAYA SMASANA
COMMITTEE, KOKKOT IN KOROME AMSOM AND DESOM.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR.
" DENY JOSEPH

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 19/3 /2007 ALONG WITH S.A.232/94 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. Nos.362/93,232/94

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Dated this the 19th day of March, 2007

JUDGMENT

Plaintiffs in O.S.143/86 and O.S.144/86 on the file of Munsiff Court, Payyannur are the appellants. They are brother and sister. Respondents are the defendants. They are the same in both the suits. Both the suits are for injunction. The case of the appellants was that the plaint schedule properties in both the suits along with the 10 cents covered under Ext.A13 gift deed was obtained by their father Virunthan on leasehold right from jenmi before 1960 and appellants were in possession of the property on tenancy rights and while so the jenm right was purchased from the Land Tribunal and Ext.A2 purchase certificate was granted and thereafter 10 cents of the property was given under Ext.A13 gift deed in favour of Kunhambu for using it as a burial ground of Pulaya Samudaya Smasana Committee and plaint schedule properties

are the balance 66 cents and respondents have no manner of right or possession over the same and they attempted to trespass into the property and therefore they are to be restrained by a permanent prohibitory injunction from trespassing into the properties. Respondents in their written statement contended that an extent of 76 cents in R.S.No.69/2 was lying as a compact plot and it was being used as a burial ground by the Pulaya Samudaya Smasana Committee and the members of the community of Korome, Kokkot, Kandoth, Perumba and Thayath were using it as their burial ground and respondents are in possession of the property for and on behalf of Pulaya Samudaya Smasana Committee and appellants are not entitled to the decree sought for. It was contended that respondents have filed an appeal against the order obtained by appellants from Land Tribunal and it is pending as A.A.104/86 and Ext.A13 gift deed was not genuine and it was not accepted and there was no necessity to accept it and appellants are not in possession of the

property and therefore they are not entitled to the decree sought for.

2.Learned Munsiff framed the necessary issues. Both the suits were jointly tried. Plaintiff in O.S.143/86 was examined as PW1. Defendants examined first defendant and three witnesses. Exts.A1 to A14, B1 to B3 and C1 and C2 were marked. Learned Munsiff on the evidence found that plaintiffs did not establish their possession of the property and the report of the Commissioner shows that plaint schedule property was being used as a burial ground as claimed by respondents and therefore appellants are not entitled to the decree for permanent prohibitory injunction sought for. The suit was dismissed. Plaintiff challenged the decree and judgment before Sub Court, Payyannur in A.S.90/89 and 91/89. The learned Sub Judge on reappreciation of evidence confirmed the findings of the learned Munsiff and dismissed the appeals. Challenging the concurrent decree and judgment plaintiffs have preferred S.A.232/94 against the

judgment in O.S.144/86 as confirmed in A.S.91/89 and S.A.362/93 against the judgment and decree in O.S.143/86 as confirmed in A.S.90/89. The appeals were admitted on formulating the following substantial question of law.

1) Whether the courts below were correct in ignoring the purchase certificate and the documents produced by the appellants to prove their possession and whether on the evidence courts below should not have granted the decree for injunction.

3. Learned counsel appearing for the appellants and respondents were heard.

4. The suit is one only for injunction. The question to be decided is whether appellants established their possession of the plaint schedule properties on the date of filing of the suit. The case of the appellants was that the entire plaint schedule properties were in the possession of their father Virunthan as per an oral lease granted by the jenmi and thereafter from the Land Tribunal its jenm right was purchased and out of 76 cents,

10 cents was gifted to Pulaya Samudaya Smasana Committee under Ext.A13 and the balance properties are in the possession of the appellants. Case of the respondents was that the entire property was being used as a burial ground of Pulaya community and the gift deed was created by the appellants and it was not accepted or acted upon and as the plaint schedule properties are used as a burial ground of the Pulaya community, appellants are not entitled to the decree sought for.

5. Though it was argued that the original order of the Land Tribunal was set aside in the appeal preferred by the respondents and remanded back to the Land Tribunal and the Land Tribunal again upheld the claim of tenancy of the appellants, that aspect is not very relevant in this suit, as the suit is only one for injunction. The courts below appreciated Ext.C1 report and C2 plan and the oral evidence tendered by the parties and found that plaint schedule properties are used as burial ground. That finding of fact arrived at on the

basis of the evidence cannot be interfered in exercise of the powers of this court under section 100 of the Code of Civil Procedure. As the decision taken by the courts below was entirely on the basis of possession and the suit is one for injunction, the dismissal of the suits will not prevent appellants from instituting suits for appropriate relief on the strength of their title. I do not find any reason to interfere with the finding of the courts below that the appellants are not entitled to the decree for injunction sought for.

The appeals are dismissed. No cost.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006